

**PRAXAIR, Inc.**

LAW DEPARTMENT 39 Old Ridgebury Road, Danbury, CT 06810-5113 / Fax 203 837-2515

**RECEIVED  
CENTRAL FAX CENTER****JUL 06 2006****FACSIMILE COVER SHEET**

(Total Pages = 22)

July 6, 2006

**PLEASE DELIVER TO:**      **Commissioner for Patents**

**Facsimile Tel. No.**      (571) 273-8300

**From:**                      David M. Rosenblum  
**Phone/Fax:**                (203) 837-2116/(203) 837-2515

**Re:**                         Heat Exchanger Distributor for  
                                 Multicomponent Heat Exchange Fluid  
                                 S/N 10/649,674; Filed: 8/28/2003  
                                 Our Ref.: D-21371

\*\*\*\*\*

Attached is a Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action and a Verified Statement by Practitioner in Support of Petition Under 37 CFR §1.81 that the Notice of Allowance and Issue Fee Due Was Never Received.

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**\*\* NOTICE OF CONFIDENTIALITY \*\***

The information contained in and transmitted with this facsimile is:

1.      **SUBJECT TO THE ATTORNEY-CLIENT PRIVILEGE;**
2.      **ATTORNEY WORK PRODUCT; OR**
3.      **CONFIDENTIAL**

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D-21371

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**RECEIVED**  
**CENTRAL FAX CENTER**  
**JUL 06 2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/649,674

Group Art Unit: 3753

Inventor: Richard J. Jibb

Filed: August 28, 2003

Title: HEAT EXCHANGER  
DISTRIBUTOR FOR MULTI-  
COMPONENT HEAT  
EXCHANGE FLUID

Examiner: T. J. Walberg

PETITION TO WITHDRAW HOLDING  
OF ABANDONMENT BASED ON FAILURE TO  
RECEIVE OFFICE ACTION

via Fax – (571) 273-8300

Mail Stop Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Sir:

1. Applicant received the attached Notice of Abandonment (Exhibit A), mailed June 8, 2006, indicating that the above identified case was abandoned by failure to timely pay the required issue fee and publication fee within the statutory period of three months.

2. A search of public records of the United States Patent and Trademark Office indicates that the notice of allowance for the above identified case was mailed January 9, 2006.

3. Applicant submits herewith a statement from the practitioner (Exhibit B) stating that the office action was not received and attesting to the fact that the file jacket was searched and the relevant docket records indicate that the office communication was not in fact received. Attached to this statement is a copy of the relevant docket records where the non-received action would have been entered had it been received and docketed.

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4. Applicant hereby petitions to withdraw the holding of the abandonment based on the fact that the Notice of Allowance and Issue Fee due was never received.

5. Applicant further petitions that the Notice of Allowance and Issue Fee due be resent by the office with a new period of reply.

6. There is no fee required for this petition.

Respectfully submitted,



David M. Rosenblum  
Attorney for Applicant  
Reg. No. 29,341

Danbury, Connecticut 06810

(203) 837-2116

June 6, 2006

D-21371



## UNITED STATES PATENT AND TRADEMARK OFFICE

EXHIBIT A

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,674	08/28/2003	Richard J. Jibb	D-21371	5667
7590 06/08/2006				
PRAXAIR, INC. LAW DEPT - M1 557 39 Old Ridgebury Road Danbury, CT 06810-5113				
EXAMINER WALBERG, TERESA J				
ART UNIT 3753		PAPER NUMBER		

DATE MAILED: 06/08/2006

REC'D JUN 13 2006

Please find below and/or attached an Office communication concerning this application or proceeding.

OFFICIAL ACTION  
NORMAL TERM EXPIRES 9-8-06  
STATUTORY DUE DATE 12-8-06  
*Revoke Appln*

**Notice of Abandonment**

Application No.

10/649,674

Examiner

WALBERG

Applicant(s)

JIBB

Art Unit

3753

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address—

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☒ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

ZC

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

## **Attachment to Notice of Abandonment**

**For questions concerning the notice contact**

**Office of Patent Publication**

**Image Assistance Center: 888-786-0101.**

Information is also available on the USPTO Internet web site:

<http://www.uspto.gov/web/patents/pubs/abandonnotice.html>

### **Respond to the Notice of Abandonment by one of the following:**

**1. Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I and 37 CFR § 1.181) No fee required**

Where an applicant contends that the application is not in fact abandoned (e.g., a reply was in fact filed), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181 to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f). In order for a petition to be granted, the evidence must be sufficient according to 37 CFR § 1.8(b) Certificate of Mailing 37 CFR § 1.10 "Express Mail" mailing or MPEP 503 Postcard Receipt as Prima Facie Evidence. The petition should be addressed as follows:

By mail: Mail Stop: Issue Fee, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
By facsimile: 703-872-9306

**2. Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (MPEP 711.03(c) II and 37 CFR § 1.181). No fee required**

Where an applicant contends that the original Notice of Allowance and Fee(s) Due was never received, if adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
By facsimile: 703-872-9306

**3. Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)**

Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) or (b) (accompanied by the appropriate petition fee) is necessary to revive the abandoned application. The text of these rules is available on the USPTO Internet Web site. Forms for these petitions, "Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a)," PTO/SB/61, and "Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," PTO/SB/64, are available in the forms section of the USPTO website: <http://www.uspto.gov>.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Mail Stop Petition, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
By facsimile: 703-872-9306

**Note:** Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment

D-21371

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**RECEIVED  
CENTRAL FAX CENTER****JUL 06 2006**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/649,674

Group Art Unit: 3753

Inventor: Richard J. Jibb

Filed: August 28, 2003

Title: HEAT EXCHANGER  
DISTRIBUTOR FOR MULTI-  
COMPONENT HEAT  
EXCHANGE FLUID

Examiner: T. J. Walberg

VERIFIED STATEMENT BY PRACTITIONER  
IN SUPPORT OF PETITION UNDER 37 C.F.R. 1.81  
THAT THE NOTICE OF ALLOWANCE AND ISSUE FEE DUE  
WAS NEVER RECEIVED

David M. Rosenblum, an attorney of record in the above-identified case disposes and says:

1. In accordance with the standard office operating procedures of Praxair Technology, Inc., the assignee of record, when papers are received from the United States Patent and Trademark Office, the same are recorded by logging and date stamping each piece of correspondence upon receipt. Any Notice of Allowance is also entered into another log book for follow up by the month the issue/publication fees are due.

2. Applicant, has therefore, submitted herewith the aforesaid log for the month of January (attached hereto as Annex 1) indicating every piece of mail received from the U.S. Patent and Trademark Office and the other log for follow up indicating the issue fees due by April 6, 2006, three months from the date public records indicate that the Notice of Allowance and Issue Fee due was mailed. An inspection of the same discloses that no indication exists that said Notice of Allowance and Issue Fee due was ever received by Applicant's attorney.

D-21371

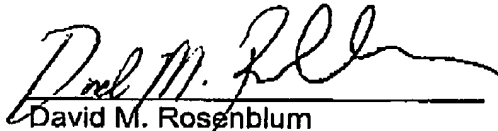
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3. Applicant's attorney has also searched the file jacket for the above identified case and found no Notice of Allowance or Issue Fee due contained therein nor any notation that the same was received.

4. Consequently, upon information and belief and based upon the review of relevant docket records, discussed above, neither the assignee of record nor Applicant's attorneys of record ever received the Notice of Allowance and Issue Fee due mailed by the U.S. Patent and Trademark Office.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

  
David M. Rosenblum  
Attorney for Applicant  
Reg. No. 29,341

Danbury, Connecticut 06810  
(203) 837-2116  
June 6, 2006  
D-21371



REC'D JAN 03 2006

	TYPE OF ACTION	USPTO MAILING DATE	SERIAL NO. PATENT NO. FILING NO.	DOCKET NO.
1.	Maintenance Fee Statement		09/901,895	21108
2.	"		09/859,483	21106
3.	"		09/598,159	20403
4.	Card #2		11/312,596	21549
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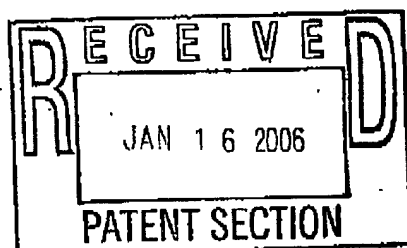
	TYPE OF ACTION	USPTO MAILING DATE	SERIAL NO. PATENT NO. FILING NO.	DOCKET NO.
1.	Filing Receipt	1/3/06	11/265,123	21545
2.	Updated Filing Receipt	"	11/136,401	21427
3.	US Patent		10/224,422	
4.	"		10/947,215	21451
5.	" (10 CopiesS)		"	"
6.	"		09/507,769	
7.	" (10 Copies)		"	
8.	"		10/621,315	20945
9.	" (10 Copies)		"	"
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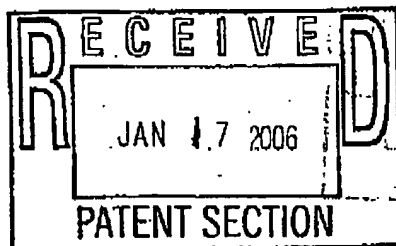
	TYPE OF ACTION	USPTO MAILING DATE	SERIAL NO. PATENT NO. FILING NO.	DOCKET NO.
1.	U.S. Patent (10 Copies)		10/225,422	
2.	Card #2		11/315,019	21292
3.	"		11/314,999	21335
4.	"		(illegible)	21198
5.	Updated Filing Receipt	1/5/06	11/248,387	21543
6.	Issue Notification		09/725,845	20743-1
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REC'D JAN 13 2006

	TYPE OF ACTION	USPTO MAILING DATE	SERIAL NO. PATENT NO. FILING NO.	DOCKET NO.
1.	Notice of Publication of Appln.		10/874,374	21390
2.	Examiner Action	1/10/06	10/670,460	CS-21294
3.	U.S. Patent		10/454,384	21233-2
4.	" (10 Copies)		"	"
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REC'D JAN 18 2006

	TYPE OF ACTION	USPTO MAILING DATE	SERIAL NO. PATENT NO. FILING NO.	DOCKET NO.
1.	Filing Receipt	1/13/06	11/296,367	21423
2.	Confirmation - Formalities ltr.	"	"	"
3.	Filing Receipt	"	11/294,477	21503
4.	Confirmation - Formalities ltr.	"	"	"
5.	Issue Notification		11/085,554	21476
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	TYPE OF ACTION	USPTO MAILING DATE	SERIAL NO. PATENT NO. FILING NO.	DOCKET NO.
1.	Filing Receipt	1/17/06	11/297,328	21532
2.	Formalities Letter	"	"	"
3.	Card #2	"	11/330,341	21559
4.	Examiner Action	"	10/678,074	21358
5.	"	1/18/06	10/847,342	21417
6.	Not. of Publication of Appln.		10/886,559	21426
7.	Copy - US Patent		09/387,757	20741-IM-1
8.	"		11/130,132	IG-21504-TW
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REC'D JAN 24 2006

	TYPE OF ACTION	USPTO MAILING DATE	SERIAL NO. PATENT NO. FILING NO.	DOCKET NO.
1.	Updated Filing Receipt	1/20/06	11/264,278	21489
2.	"	"	11/259,450	21529
3.	Not of Accep. of Power of Atty	"	09/062,599	21311
4.	Updated Filing receipt	1/19/06	11/202,070	21505
5.	Monthly Statement of Dep. Acct.			
6.	Notice of Allowance & Fees Due	1/20/06	11/290,531	21356-1
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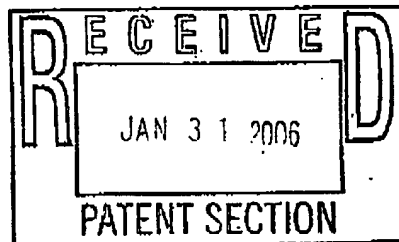
	TYPE OF ACTION	USPTO MAILING DATE	SERIAL NO. PATENT NO. FILING NO.	DOCKET NO.
1.	Not. of Allowance and Fees Due	1/23/06	10/267,840	20977
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REC'D JAN 27 2006

	TYPE OF ACTION	USPTO MAILING DATE	SERIAL NO. PATENT NO. FILING NO.	DOCKET NO.
1.	U.S. Patent		09/725,845	
2.	" (10 Copies)		"	
3.	U.S. Patent		10/724,105	
4.	" (10 Copies)		"	
5.	Updated Filing Receipt	1/24/06	11/261,667	21540
6.	Notice of Office Action		10/640,298	
7.	Not of Acceptance of POA	1/24/06	09/111,838	21313
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REC'D JAN 30 2006

	TYPE OF ACTION	USPTO MAILING DATE	SERIAL NO. PATENT NO. FILING NO.	DOCKET NO.
1.	Not. of Publication of Appln.		10/528,410	PS-21472-US
2.	"		10/882,610	21402
3.	Card #2		11/335,579	21482
4.	Examiner Action	1/25/06	10/315,261	21274-2
5.	"	"	10/777,657	20826-1
6.	"	"	10/214,671	21231
7.	"	"	10/768,080	21219-1
8.	"	"	09/951,955	20980
9.	Maintenance Fee Statement		09/430,310	20751
10.	"		09/848,145	21103
11.	Not. of Patent Expiration		08/586,022	10039
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## ANNEX 2

April 26

## UNITED STATES ISSUED FEE PAYMENT FOLLOW-UP

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